

Message

From: Gleason, Patricia [Gleason.Patricia@epa.gov]
Sent: 4/1/2021 11:19:03 AM
To: Hamilton, Brian [Hamilton.Brian@epa.gov]
Subject: RE: Regions Collaborate to Address a Consultation Request by the Seneca Nation of Indians

Yes, I wasn't aware of some of this history.

From: Hamilton, Brian <Hamilton.Brian@epa.gov>
Sent: Wednesday, March 31, 2021 8:48 PM
To: Gleason, Patricia <Gleason.Patricia@epa.gov>
Subject: RE: Regions Collaborate to Address a Consultation Request by the Seneca Nation of Indians

Is this Joel just summarizing past efforts in coordinating with the Seneca Nation from the NPDES Team?

From: Gleason, Patricia <Gleason.Patricia@epa.gov>
Sent: Wednesday, March 31, 2021 3:43 PM
To: Hamilton, Brian <Hamilton.Brian@epa.gov>
Subject: FW: Regions Collaborate to Address a Consultation Request by the Seneca Nation of Indians

Brian,
Sending to you as a FYI.
Pat

From: Blanco-Gonzalez, Joel <Blanco-Gonzalez.Joel@epa.gov>
Sent: Wednesday, March 31, 2021 3:17 PM
To: Martinsen, Jessica <Martinsen.Jessica@epa.gov>; Gleason, Patricia <Gleason.Patricia@epa.gov>; Hales, Dana <Hales.Dana@epa.gov>
Subject: Regions Collaborate to Address a Consultation Request by the Seneca Nation of Indians

Good afternoon,

Below, please find some background on this effort based on related salient issues, briefing papers, statewide news, and communications between EPA, stakeholders, and counterparts. Of main concern when developing NPDES permit requirements, is to consider the water quality standards of downstream waters.

In 2017-2019, Region 2, Region 3, NYSDEC, and some PADEP ROs worked together to ensure that, point sources that have a potential to discharge pollutants to surface waters that enter the Seneca Nation of Indians (SNI) lands, were in compliance with environmental laws. However, there were other PADEP ROs that did not coordinate with EPA and used their best professional judgment on a case-by-case basis to ensure compliance with environmental laws. There were several meetings held between former and current regional leadership, stakeholders, and counterparts, but I do not recall the outcomes of such meetings.

PADEP informed that there was a private oil and gas resource extraction joint venture that was providing NPDES applicants with planning, design, construction, operation, maintenance, technical/legal assistance, and funding to figure out and implement the most profitable way to dispose of waste generated by this practice. This joint venture was having communications with PADEP about, among many topics of interest, CWA requirements. This joint venture was exploring five alternatives to meet the CWA requirements.

1. **Zero Discharge (ZD):** There are operations that do not discharge process wastewater to water of U.S. This practice uses storage structures such as lagoons to capture and hold the process wastewater. This practice uses land acquisition to extend and improve storage capacity and safety.
2. **Publicly Owned Treatment Works (POTWs):** There are operations that discharge process waste water through, a POTW with an approved pretreatment program, to discharge pollutants to waters of the U.S. An approved pretreatment program issues permits to industrial users and notifies EPA of permits issued as part of an annual report. An approved pretreatment program does not public notice permits proposed and so the general public does not have any participation.
3. **Privately Owned Wastewater Treatment Plant (POTWs):** There are POTWs with approved pretreatment programs that have been sold. Once they have been sold, they are considered POWTPs. EPA is still figuring out how to manage the implementation and compliance of environmental laws at these operations.
4. **Centralized Wastewater Treatment (CWT):** There are existing CWTs receiving and treating this process wastewater to discharge pollutants to waters of the U.S. However, these CWTs are not located within a profitable hauling distance from these operations. These CWTs shall amend their NPDES permits to accept process wastewater from these operations. A major change to an NPDES permit shall be public noticed for general public participation.
5. **Oil and Gas Resource Extraction Treatment Wastewater Treatment Plant (OGTP):** There are existing, planned, and under construction OGTP that shall have NPDES permits to discharge pollutants to waters of the U.S. An NPDES permit shall be public noticed for general public participation.

This joint venture has used alternative #2 and can use alternative # 3 above to discharge pollutants to waters of the U.S. Both alternatives do not have public participation, which is the main reason why SNI issued a consultation request. These operations have failed to conform to the pretreatment permits issued by the approved pretreatment programs.

Also, this joint venture has used alternatives #4 and #5 above, but it did not meet the NPDES application requirements to be part of an NPDES permit for a CWT or to have an NPDES permit for an OGTP to discharge pollutants to waters of the U.S. Moreover, this joint venture has used alternative #1 above, but this practice increases the fixed costs by acquiring new land, and operational costs by operating and maintaining these storages.

These NPDES will expire and shall be reissued to continue discharging pollutants to water of the U.S. Per state requirements and practices, these permits can be administratively continued. Once EPA has received these permits for review, EPA shall ensure that the NPDES permits effluent limits conform to environmental laws.

With respect to point sources that have a potential to discharge pollutants to surface waters that enter SNI lands, as a recommendation, Region 2, Region 3, NYSDEC, PADEP, and SNI should continue joining efforts to review NPDES permits for point sources discharging pollutants to these surface waters by identifying and tracking point source categories, expected pollutants, and monitoring and recordkeeping reports submitted to help review TBELs, WQBELs, anti-backsliding, and antidegradation requirements. The NPDES Section should consider these surface waters as an area of concern and add these surface waters to the NPDES screen review checklist.

WD CWB PS

Regions Collaborate to Address a Consultation Request by the Seneca Nation of Indians - On April 30, 2018, Region 2 responded to a consultation request by the Seneca Nation of Indians (SNI) in New York on addressing

water pollution by regulating resource extraction point sources that have a potential to discharge pollutants to surface waters that enter SNI lands. Region II will lead the consultation process given the geographic location of the SNI. Region 3 will participate in consultation and will support Region 2 with the technical review of any proposed projects in Pennsylvania to ensure that the SNI's concerns are addressed. Of main concern when developing National Pollutant Discharge Elimination System permit requirements, is to consider the water quality standards of downstream waters.

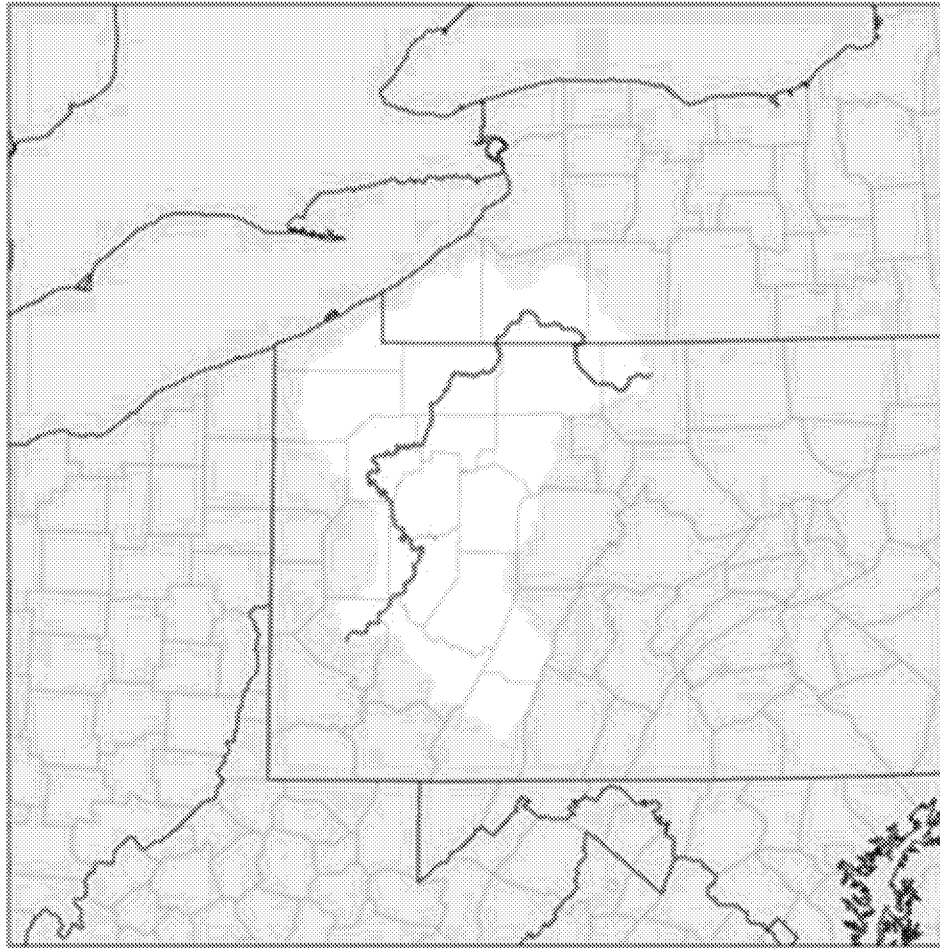
UOG Resource Extraction Pretreatment Standards Decision - On July 5, 2019, EPA, in its oversight and regulatory capacity, provided notice of its decision to not revise the 2016 final rule establishing pretreatment standards for discharges of pollutants into publicly owned treatment works (POTWs) from onshore unconventional oil and gas (UOG) resource extraction facilities. On August 28, the National Pollutant Discharge Elimination System (NPDES) Permits Section sent letters to the Pennsylvania Department of Environmental Protection and four Pennsylvania POTWs to remind them of EPA's decision to not revise the "no discharge" pretreatment standards for existing sources of UOG wastewater. As of August 29, four POTWs servicing approximately 900 oil and gas wells will no longer be able to accept those discharges and those well operators will have to seek other means of disposal.

WD CWB STS

EPA Plans to Initiate Consultation with the Seneca Nation of Indians on Pennsylvania's Proposed Rulemaking for Manganese – EPA prepared a letter offering consultation to the Seneca Nation of Indians (SNI) on Pennsylvania's proposed rulemaking to revise the manganese water quality standard. On July 25, 2020, Pennsylvania published this proposed rulemaking in the Pennsylvania Bulletin. EPA shared this publication with SNI. The public comment period will be open until September 25, 2020 and three virtual public hearings will be held on September 8, 9, and 10, 2020. Pennsylvania's proposed rulemaking would remove the existing manganese water quality standards criterion and adopt a revised manganese water quality standards criterion for the protection of human health. The rulemaking proposes two alternatives for a point of compliance with the manganese water quality standard and seeks public comment on both alternatives: the point of all existing or planned surface potable water supply withdrawals, or the point of discharge.

EPA Holds Initial Consultation Meeting with the Seneca Nation of Indians – EPA Regions 3 and 2 held an initial consultation meeting with the Seneca Nation of Indians (SNI) on September 9, 2020. Three pending actions in Pennsylvania were discussed: Pennsylvania's triennial review of water quality standards, Pennsylvania's proposed rulemaking to revise the manganese water quality standard and implementation, and Pennsylvania's 2020 303(d) impaired waters list. EPA expects to complete consultation with SNI on the triennial review by the beginning of October 2020, the 303(d) impaired waters list by the end of October 2020, and the consultation on the manganese water quality standard is ongoing.

Allegheny River



Should you have any questions or concerns regarding this matter, please contact me.

Respectfully,

Joel

Joel Blanco-González
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